

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

MIGUEL CUADRA-LA-FUENTE, M&M
AGRICULTURAL ENTERPRISE, INC.,

Plaintiffs,

v.

THOMAS JAMES VILSACK, U.S. ATTY
ROSA EMILIA RODRÍGUEZ,

Defendants.

Civil No. 14-1245 (JAF)

OPINION AND ORDER

Plaintiffs Miguel Cuadra-La-Fuente (“Cuadra-La-Fuente”) and M&M Agricultural Enterprise, Inc. (“M&M”) (collectively “Plaintiffs”),¹ are suing Defendants Thomas James Vilsack, the Secretary of the United States Department of Agriculture (“Vilsack”), and United States Attorney Rosa Emilia Rodríguez (“Rodríguez”) (collectively “Defendants”). Plaintiffs purport to sue Defendants

pursuant to 28 U.S.C. 2201; 28 USC 1491 (a)(1), 28 USC 1331, 15 U.S.C. 1691 a, 42 USC2000d, 5 USC 706, 42 USC 1988, Violation of First Amendment Rights, Unjust Enrichment, violations of 42 USC 1985, and jurisdiction is also proper as the Breach of Contract by the Unites States of America or one of its agencies (defendants) constitutes a Federal Question.

(Docket No. 1 at 1) (sic). Defendants ask that we dismiss the complaint for (1) lack of subject matter jurisdiction under the Tucker Act, (2) lack of subject matter jurisdiction for failure to exhaust administrative remedies, and (3) lack of *in personam* jurisdiction and

¹ The first sentence of the complaint also mentions Maribel Pagán. However, she is not listed as one of the parties in the corresponding section of the brief and is not discussed in the complaint. (See Docket No. 1.) Therefore, we do not include her as a party.

1 insufficient service of process. (Docket No. 14). Because Plaintiffs failed to properly
2 serve Defendants, we grant the dismissal for lack of personal jurisdiction.

3 **I.**

4 **Factual Background**

5 When considering a motion to dismiss, we must construe the complaint in the
6 plaintiff's favor, accept all non-conclusory allegations as true, and draw any reasonable
7 inferences in favor of the plaintiff. *Rodríguez-Ramos v. Hernández-Gregorat*, 685 F.3d
8 34, 39-40 (1st Cir. 2010) (internal citation omitted). However, because we dismiss the
9 case for lack of personal jurisdiction, we need not examine the substantive facts of the
10 case at this point in time.²

11 **II.**

12 **Procedural Background**

13 On March 31, 2014, Plaintiffs filed a complaint against Defendants in federal
14 court. (Docket No. 1.) Plaintiffs first improperly filed and submitted improper
15 summons. (*See* Docket Nos. 2, 3, 8.) We extended the service of process deadline to
16 August 5, 2014, to correct these errors. (Docket No. 9.) On July 24, 2014, summons was
17 served upon Rodríguez. (Docket No. 11.) On September 12, 2014, Defendants filed a
18 motion alternatively (1) arguing that the case should be dismissed for lack of proper
19 service or (2) asking for an extension of time to answer. (Docket No. 12.) We issued an
20 order stating that we did not have before us a specific motion to vacate or strike service

² We note for any future filings that counsel for Plaintiffs repeatedly violates his own naming conventions and uses "plaintiff" interchangeably for both the person and the corporation, making it extremely difficult to discern which plaintiff is being referenced. This is extremely confusing and should be avoided in any future filings. (*See* Docket No. 1.)

1 of process and, therefore, we simply granted the extension to Defendants. (Docket
2 No. 13.)

3 On October 22, 2014, Defendants filed the instant motion to dismiss for (1) lack of
4 subject matter jurisdiction under the Tucker Act, (2) lack of subject matter jurisdiction for
5 failure to exhaust administrative remedies, and (3) lack of *in personam* jurisdiction and
6 insufficient service of process. (Docket No. 14). On November 28, 2014, Plaintiffs filed
7 a response in opposition to the motion to dismiss. (Docket No. 21.) On December 10,
8 2014, Defendants filed a reply. (Docket No. 24.)

9 III.

10 **In Personam Jurisdiction and Service of Process**

11 As stated in Rule 4 of the Federal Rules of Civil Procedure, when serving the
12 United States and its agencies, corporations, officers, or employees, there are certain
13 requirements.

14 To serve the United States, a party must (a) “deliver a copy of the summons and of
15 the complaint to the United States attorney for the district where the action is brought,”
16 and (b) “send a copy of each by registered or certified mail to the Attorney General of the
17 United States at Washington D.C.; and” (c) send a copy by registered or certified mail to
18 the agency or officer if the action challenges an order of a nonparty agency or officer.
19 FED. R. CIV. P. 4(i) (emphasis ours). Plaintiffs failed to do this. Although Plaintiffs
20 delivered a copy of the summons and of the complaint to the United States Attorney for
21 Puerto Rico (Docket No. 11), Plaintiffs failed to send copies to the Attorney General of
22 the United States at Washington, D.C., as required by the rule. Defendants submit emails

1 stating that summons were never received in Washington D.C., and Plaintiffs never
2 submitted an executed summons for the Attorney General to prove otherwise. (Docket
3 No. 14-2.) It appears that rather than sending the summons for the Attorney General to
4 Washington, D.C., Plaintiffs attempted to give his summons to the United States Attorney
5 in San Juan, which does not meet the requirements of the rule. (*See* Docket No. 14 at 8.)
6 Therefore, the United States was not properly served in this case and must be dismissed
7 as a party.

8 When serving an agency, corporation, officer, or employee in their official
9 capacity, “a party must serve the United States and also send a copy of the summons and
10 of the complaint by registered or certified mail to the agency, corporation, officer, or
11 employee.” FED. R. CIV. P. 4(i). We have already established that the United States was
12 improperly served, which means that Vilsack, who was sued in his official capacity as
13 Secretary of the USDA, must also be dismissed as a party. Even if this were not the case,
14 the rule requires that a copy of the summons and of the complaint must be sent by
15 registered or certified mail to the agency, corporation, officer, or employee. FED. R. CIV.
16 P. 4(i). This was not done. Defendants submit emails stating that Vilsack was not
17 served, and Plaintiffs have not submitted an executed summons for him. (Docket No. 14-
18 2.) It appears that rather than sending the summons for Vilsack to the agency
19 headquarters in Washington, D.C., Plaintiffs attempted to only give his summons to the
20 United States Attorney in San Juan, which does not meet the requirements of the rule.
21 (*See* Docket No. 14 at 8.) Either failure alone would have been sufficient to dismiss
22 Vilsack as a party.

1 Because there was insufficient service of process, there is no personal jurisdiction
2 over Defendants. Therefore, the causes of action against them are dismissed. According
3 to the Federal Rules, this action is dismissed without prejudice. FED. R. CIV. PRO. 4(m).

4 **IV.**

5 **Lack of Subject Matter Jurisdiction Under the Tucker Act and Lack of Subject**
6 **Matter Jurisdiction for Failure to Exhaust Administrative Remedies**
7

8 Because there is no personal jurisdiction over Defendants, the question of subject
9 matter jurisdiction is moot.

10 **V.**

11 **Conclusion**

12 For the foregoing reasons, we **GRANT** Defendants' motion to dismiss (Docket
13 No. 14). Plaintiff's claims are **DISMISSED WITHOUT PREJUDICE**.

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 16th day of January, 2015.

16 S/José Antonio Fusté
17 JOSE ANTONIO FUSTE
18 U. S. DISTRICT JUDGE